

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**APPEAL FROM ORDER No. 26 of 2005
with
APPEALS FROM ORDER No. 27 to 31 of 2005**

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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NIRAV NIRANJAN SHAH - Appellant(s)

Versus

KANAIYALAL N CHAVALA & 5 - Defendant(s)

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Appearance :

MR DHIRAJ M PATEL for the Appellant.

MR KH BAXI for the respondents.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 09/01/2006

ORAL JUDGMENT

1. This set of appeals came to be admitted by order dated 8th February, 2005 and were ordered to be fixed for final hearing on 27th April,

2005. However, the final hearing has taken place today.

2. In this set of Appeals from Order, the appellant is original defendant No.3 in various suits preferred by respondent No.1 against the appellant and rest of the respondents for damages in respect of collapse of building in earthquake, which was developed by a firm, Jay Associates, of which the present appellant was one of the partners.

3. An injunction was sought against the defendants, particularly defendant No.3-present appellant, restraining him from transferring or alienating the properties indicated in paragraph 5 of the application for Notice of Motion, which includes three properties stated as under :-

- (1) 'Jay Industries' with its office, factory building and office furniture at Soni's Chawl, Beside Chemical factory, Near Old Tolnaka, Rakhial, Ahmedabad.
- (2) 'Jay Industries', a factory manufacturing water pumps, situate at Rajkamal Estate, Soni's Chawl, Beside Chemical factory, Near Old Tolnaka, Rakhial, Ahmedabad.
- (3) 'Jay House', a building located at Rambaug, Maninagar, Ahmedabad.

The injunction was sought only with a view to ensure that the decree that may be passed does not get frustrated, if the properties are transferred by the defendants.

4. The defendants in the Trial Court chose not to contest the Notices of Motion except the present appellant, who filed written statement to the plaint and reply to the application specifically contending that he owns a property in Jaihind Society, which he does not intend to transfer to anyone. His case is that, he is a partner of Jay Industries engaged in the manufacture of tools, but he has no connection whatsoever with Jay Industries engaged in manufacture of water pumps and the property described as Jay House, located at Maninagar and, therefore, no such injunction could be sought by the plaintiff in respect of these two properties.

5. The Trial Court, after hearing both the sides, passed the impugned orders on 15th September, 2003, allowing the Notices of Motion and confirming the ad-interim injunction granted earlier in terms of paragraph 7(a) and (c).

6. Learned Advocate, Mr. Patel, for the appellant submitted that the appellant has no objection so far as the grant of prayer at paragraph 7(a) is concerned. He submitted that, so far as the relief at paragraph 7(c) is concerned, the appellant is aggrieved for the reason that Jay Industries

engaged in manufacture of tools is a firm of which the appellant is only one of the partners. That firm has nothing to do with the development of the building which collapsed in the earthquake and the properties of that firm cannot be restrained from being dealt with only on this count because the suit is for damages, a decree is yet to be passed and, if it is passed, only the share of the appellant in that firm can be attached for execution of the decree. So far as the other firm manufacturing water pumps and the property called Jay House are concerned, the appellant has no connection whatsoever and, therefore, the relief could not have been granted against those properties.

7. Learned Advocate, Mr. Baxi, submitted that the appellant was the developer of the building which collapsed in the earthquake and he is trying to confuse the issue by showing his involvement or non-involvement in Jay Industries and Jay House, which is not relevant at all. Mr. Baxi submitted that, if the properties are permitted to be dealt with, all that the plaintiffs would be getting is a paper decree and with a view to protect the interest of the plaintiffs, the orders are passed. He submitted that, this Court may not, therefore, interfere with the orders.

8. This Court has taken into consideration rival side contentions. When the plaintiffs approached the Court seeking a particular relief, the onus was upon them to establish the case in their favour and to establish that defendant, No.3-appellant herein, has interest in the properties in respect of

which injunction is sought. The appellant-original defendant No.3 has come with a specific case that he has no interest in the property known as Jay House or Jay Industries manufacturing water pumps. Even, thereafter, no steps were taken by the plaintiff to bring on record any material to show that defendant No.3 is interested in that firm or property and, in absence of any material showing any interest of defendant No.3 either in the firm or in the property, the orders could not have been passed by the Trial Court. The orders to that extent, therefore, stands vitiated and cannot be permitted to stand.

9. So far as the orders in respect of Jay Industries engaged in manufacture of tools is concerned, it is the case of the appellant that he is one of the partners of the firm. Undisputedly, that firm has nothing to do with the development and/or construction of the building which collapsed in the earthquake. The developer was Jay Associates in which the appellant was again one of the partners. Injunction against defendant No.3 in respect of a firm which has nothing to do with the development of the building and a firm of which he is only one of the partners, in absence of any order against rest of the partners of that firm or in absence of any order against the firm itself would be of no virtue. The decree for damages is yet to be passed and transactions of a firm, which has no nexus with the development or construction of the building, cannot be permitted to be affected in this manner only because there is a common partner in the two firms and, therefore, to that extent also, the injunction order could not have been passed. The order,

therefore, is not sustainable.

10. For the foregoing reasons, the appeals deserve to be allowed the same are allowed. The orders passed by the Trial Court, which are impugned in these appeals, are hereby set aside. It is, however, clarified that the appellant shall stand bound by his averment in the written statement that he does not intend to transfer the property located at Plots No.9 and 9-A, Jaihind Society, admeasuring 667 sq. yards till the final disposal of the suits. No costs.

11. At this stage, a request is made by learned Advocate, Mr. Baxi, to suspend the operation of this order for a period of four weeks, as the injunction granted by the Trial Court is operating till today to enable the respondents-original plaintiffs to approach the higher forum. Learned Advocate, Mr. Patel, has no objection. The operation of the order passed today stands suspended for a period of four weeks, i.e. upto 9th February, 2006.

[A. L. DAVE, J.]

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